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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048879
Party	Defendant IRENE J. ORTEGA DBA GOGIRL ACTIVEWEAR
Correspondence Address	Barry F. Soalt Procopio Cory Hargreaves & Savitch LLP 530 B Street, Suite 2100 San Diego, CA 92101 UNITED STATES bfs@procopio.com
Submission	Opposition/Response to Motion
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Signature	/bfs/
Date	02/05/2009
Attachments	Opposition and Declaration.pdf (9 pages)(178147 bytes) Exhibit 1.pdf (25 pages)(392381 bytes) Exhibit 2 - Part 1.pdf (15 pages)(265969 bytes) Exhibit 2 -Part 2.pdf (17 pages)(279372 bytes)

IN THE UNITED STATES TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Reg. No. 2,227,005

Trademark: GO GIRL

<p>NOR-CAL BEVERAGE CO., INC.,</p> <p style="padding-left: 40px;">Petitioner and Counterclaim Defendant,</p> <p style="text-align: center;">v.</p> <p>IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR,</p> <p style="padding-left: 40px;">Respondent and Counterclaim Plaintiff.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Cancellation No. 92048879</p> <p>OPPOSITION TO PETITIONER'S MOTION TO COMPEL DISCOVERY</p>
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OPPOSITION TO PETITIONER'S MOTION TO COMPEL DISCOVERY

Respondent, IRENE J. ORTEGA-ELDON, dba GOGIRL ACTIVEWEAR (hereinafter "Ortega") responds to Petitioner's Motion To Compel Supplemental Responses to:

1. Petitioner's First Set of Interrogatories, Nos. 1(f), 2, 3, 4, 9, 10, 11(b).
2. To withdraw the designation of certain documents as "trade secrets/commercially sensitive", and
3. To produce an electronic copy of or make available for inspection and copying, documents requested in Petitioner's First Request for Production of Documents and Things.

Respondent filed its responses to Petitioner's First Set of Requests for Admission (Nos. 1-46), First Set of Interrogatories (Nos. 1-12) and Respondent's First Set of Request for Production of Documents (Nos. 1-38) on August 18, 2008. These responses included both answers and objections.

Petitioner's counsel requested supplemental responses to its First Set of Requests for Admission. Respondent replied to counsel's request in a good faith effort to resolve the dispute and filed Respondent's Supplemental Responses to Respondent's First Set of Requests for Admission (Nos. 1-46) on or about August 29, 2008. A copy of the Supplemental Responses and a letter from counsel for Respondent is attached to the Declaration of Barry F. Soalt as "Exhibit 1".

Before providing complete answers to Interrogatories and Production of Documents, Respondent's counsel submitted a Proposed Stipulated Protective Order in the form of the TTAB Standard Protective Order. While this document was pending approval by Petitioner's counsel, Respondent had prepared documentation with the typically accepted confidential designation of "trade secrets/commercially sensitive"/attorneys' eyes only legends. Respondent's nearly six thousand (6,000) documents being produced were reviewed with such confidentiality labeling. In the interim, petitioner's counsel objected to the standard form of Stipulated Protective Order and requested approval of a Stipulated Protective Order in Petitioner's counsel's preferred format, using a single level "confidential" designation. Respondent's counsel reviewed that proposed Stipulated Protective Order, agreed to the terms and again arranged for review of the six thousand (6,000) documents making appropriate changes to the designation where needed. The Stipulated Protective Order was signed by the parties, submitted to and approved by the Board in December 2008.

In response to Petitioner's counsel's letter dated January 8, 2009, Respondent prepared and served its Supplemental Responses to Interrogatories and Production of Documents on January 16, 2009, the same day that Petitioner's counsel filed this Motion To Compel discovery. A copy of Respondent's Supplemental Responses as served on Petitioner are attached to the

Declaration of Barry F. Soalt as "Exhibit 2", along with a letter from Respondent's counsel. The response to the Production of Documents as served on Petitioner included an electronic copy of approximately six thousand (6,000) documents labeled within Bates Range IJO 000001 – IJO 0059598 and were sent to Petitioner's counsel on a disk. These Supplemental Responses obviously crossed in the mail with Petitioner's Motion to Compel, as both were served on the same day, namely, January 16, 2009.

Respondent's Memorandum

Respondent believes that Petitioner's counsel has been served with complete and appropriate responses to petitioner's requests for admissions, interrogatories and requests for production of documents. **Respondent provided complete supplemental responses to interrogatories and provided Petitioner's counsel with an electronic version of over approximately 6,000 pertinent documents as was promised within approximately 30 days of receipt of the Board's approval of the Stipulated Protective Order.**

Respondent's agreement to accept the single level designation of confidential documents merely as "confidential" and not the two-tier legend an initially proposed in the Stipulated Protective Order overcome Petitioner's objection to the designation of certain documents as "over designated with confidential status." Petitioner has not had the benefit of reviewing or completely reviewing the supplemental responses and the approximately 6,000 documents identified prior to serving this motion. Respondent believes it has appropriately and substantively responded to each matter for which the Petitioner is seeking the motion to compel, including:

1. That supplemental answers be provided to Interrogatories 1(f), 2, 3, 4, 9, 10, 11(b), which are in full compliance with F.R.C.P. 33(a), including a

verification for the supplemental answers.

2. That Respondent has addressed Petitioner's issue with respect to the over-designation of documents as "trade secrets/commercially sensitive" by virtue of re-categorizing documents in accordance with the Board-approved Stipulated Protective Order re-designating such documents as "confidential" where appropriate. To the extent that Petitioner has ongoing objections to the designation of specific documents as "confidential," Respondent is willing to review those specific requests and remove a "confidential" designation if such documents are truly within the public domain. Respondent's counsel will work cooperatively with Petitioner's counsel to the extent any unresolved issues remain in that regard.
3. Petitioner's counsel has now received an electronic copy of all documents produced and Respondent has produced nearly 6,000 documents compliant within the scope of discovery herein.
4. Respondent's counsel has written to Petitioner's counsel on January 16, 2009, indicating its willingness to agree to a further stipulation of discovery and trial dates and Respondent remains receptive to that.
5. **Respondent believes it has fully complied with all the relief sought by Petitioner in this motion to compel**, that it has done so in good faith cooperation, and Respondent and its counsel continue to be willing to resolve other reasonable requests pertaining to the production of discovery herein.

Respondent has produced its documents as kept in the normal course of business. Respondent's counsel endeavored to designate all documents within the Bates range provided pertinent to Petitioner's interrogatory. Where Petitioner's interrogatory was broad in scope, then obviously the range of documents pertinent to that question is broad in scope, such as Interrogatory 1(b), requesting the identification of documents which evidence or support continuous use of GO GIRL as a trademark. With questions like this, Petitioner will obviously get a large set of documents responsive to a broad interrogatory question, and cannot complain of a broad designation as non-responsive.

With respect to Petitioner's argument that some of the documents are over-designated as "confidential," the documents produced are Respondent's confidential business information. To the extent a particular document is public record, then Respondent's counsel will be glad to re-designate when the issue is brought to its attention.

In light of the foregoing, Respondent submits that she has fully complied with the Federal Rules of Civil Procedure pertaining to providing the Respondent's discovery responses and that **this motion to compel is moot**. Respondent will work with opposing counsel in good faith to resolve any appropriate remaining discovery issues with respect to this matter.

Respectfully submitted,

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

Dated: February 5, 2009

By: 
Barry F. Soalt

530 B Street, Suite 2100
San Diego, CA 92101
Telephone: (619) 525-3865
Facsimile: (619) 235-0398

Attorneys for Respondent and Counterclaim
Plaintiff, IRENE J. ORTEGA-ELDON
dba GOGIRL ACTIVEWEAR

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Procopio, Cory, Hargreaves & Savitch LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On February 5, 2009, I served the within documents:

OPPOSITION TO PETITIONER'S MOTION TO COMPEL DISCOVERY

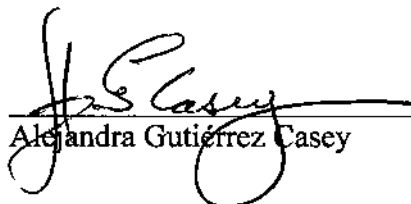
by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

R. Michael West, Esq.
Law Offices Of R. Michael West
1922 21st Street
Sacramento, California 95811
Tel: (916)-444-5444
Fax: (916)-444-5441

Attorney For Petitioner
NOR-CAL BEVERAGE CO., INC.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 5, 2009, at San Diego, California.


Alejandra Gutierrez Casey

IN THE UNITED STATES TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Reg. No. 2,227,005

Trademark: GO GIRL

<p>NOR-CAL BEVERAGE CO., INC.,</p> <p style="padding-left: 40px;">Petitioner and Counterclaim Defendant,</p> <p>v.</p> <p>IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR,</p> <p style="padding-left: 40px;">Respondent and Counterclaim Plaintiff.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Cancellation No. 92048879</p> <p>DECLARATION OF BARRY F. SOALT IN OPPOSITION TO THE MOTION TO COMPEL DISCOVERY</p>
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DECLARATION OF BARRY F. SOALT
IN OPPOSITION TO THE MOTION TO COMPEL DISCOVERY

I, Barry F. Soalt, declare and state as follows:

1. I am an attorney at law, and am Respondent's counsel of record in connection with this Cancellation proceeding. I have personal knowledge of the facts contained in this Declaration, and I could and would testify competently to these facts if called as a witness.
2. This Declaration is made under 37 C.F.R. § 2.120(e), and includes statements of counsel for Respondent regarding the good faith efforts made to resolve with opposing counsel, the issues presented in the accompanying Opposition to Motion To Compel Discovery.
3. Attached hereto, and identified as "**Exhibit 1**" is a true and accurate photocopy of RESPONDENT'S SUPPLEMENTAL RESPONSES TO PETITIONER'S FIRST SET OF

REQUESTS FOR ADMISSION (NOS. 1-46), and correspondence of same date (August 29, 2009).

4. Attached hereto, and identified as “**Exhibit 2**” is a true and accurate photocopy of RESPONDENT’S SUPPLEMENTAL RESPONSES TO PETITIONER’S FIRST SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS UNDER RULE 34 (NOS. 1-38). An electronic copy of documents provided as Bates Range IJO 000001 – IJO 005958 was served on Petitioner’s counsel on January 16, 2009, along with the letter dated January 16, 2009 from Respondent’s counsel.

5. I hereby state that I believe that Respondent’s supplemental responses are appropriate to address the issues raised by Petitioner’s counsel regarding the discovery dispute which has arisen and which is the subject of this Motion.

I declare under penalty of perjury, under the laws of the United States, that the facts set forth in this Declaration are true, that all statements made of my own knowledge are true, and that all statements made on information and belief are believed to be true.

Dated: February 5, 2009


Barry F. Soalt

Attachments: Exhibits 1-2, inclusive

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Procopio, Cory, Hargreaves & Savitch LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On February 5, 2009, I served the within documents:

**DECLARATION OF BARRY F. SOALT IN OPPOSITION
TO THE MOTION TO COMPEL DISCOVERY**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

R. Michael West, Esq.
Law Offices Of R. Michael West
1922 21st Street
Sacramento, California 95811
Tel: (916)-444-5444
Fax: (916)-444-5441

Attorney For Petitioner
NOR-CAL BEVERAGE CO., INC.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 5, 2009, at San Diego, California.

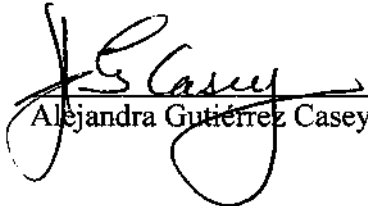

Alejandra Gutierrez Casey

EXHIBIT 1

Barry F. Soalt
Direct Dial: (619) 525-3865
E-mail: bfs@procopio.com

August 29, 2008

VIA FACSIMILE (916) 444-5441

R. Michael West, Esq.
1922 21st Street
Sacramento, CA 95811

**Re: Nor-Cal Beverage Company, Inc. v. Irene J. Ortega
Cancellation No. 92048879
Request for Admission - Good Faith Effort to Resolve**

Dear Michael:

I have received and reviewed your letter of August 21, 2008. First of all to set the record straight, an extension of time to respond to discovery was requested by me due to a personal illness. I did not have an opportunity to examine your discovery pleadings substantively until reviewing with the client to prepare appropriate responses. Furthermore, I am sorry you have a difficult time believing that the exhibits were not attached, but they were not. Had they been attached, I would have simply provided you with the same responses that I am serving upon you with the attached supplemental responses herewith. I don't know what you think I could possibly have to gain in a one week delay in providing you with these responses and I find your posturing that I am "protracting the proceedings in general, and increasing the cost of the litigating this matter" or otherwise engaging in "unwarranted gamesmanship" totally unwarranted. If I recall, I have attempted to approach you on several occasions to have the parties consider a resolution of the dispute, but it is your client who chooses to move on with the proceedings and place its right to use the mark at risk. It would be nice to get beyond this issue and discuss your client's willful infringement of my client's mark and registration, even in the absence of a registration by virtue of its common law rights.

Your letter also raises a general objection to the fact that a number of our responses to RFA's were denials based upon the contention that respondent, "... lacks sufficient information to admit ... and therefore denies this request". I understand that you are asking for supplemental responses on the assumption that those responses were simply premised on not having the documents in the exhibits attached to your RFA's. While that may have been one reason for the response, we have reviewed our responses again with the client and have supplemented where appropriate in the attached supplemental responses. Please note that responding parties may

R. Michael West, Esq.
August 29, 2008
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explain in their response why they are unable to admit or deny under FRCP 36(a). If you are simply unsatisfied with the responses because they are not what you hoped to see, that doesn't provide you with a basis for bringing a motion to compel under the TTAB rules.

Responses to the RFA's are being provided with respect to RFA's 30 and 35-46. RFA's Nos. 30, 39, 40, 45, 46 have been changed from "Deny" to "Admit". The other responses remain "Deny" but have been revised.

Since you do not want to use the standard TTAB stipulated protective order, I am reviewing your proposed form of Stipulated Protective Order and will provide our comments by Tuesday so we can complete the marking of documents to provide you with the same.

If you have any other substantive issues with respect to the supplemental responses that you would like to discuss, please let me know. Signed Verifications will follow.

Very truly yours,



Barry F. Soalt

BFS/bb

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NOR-CAL BEVERAGE CO., INC.,

Petitioner and Counterclaim Defendant,

V.

**IRENE J. ORTEGA, dba GOGIRL
ACTIVEWEAR,**

Respondent and Counterclaim Plaintiff.

Cancellation No. 92048879

RESPONDENT IRENE J. ORTEGA,

DBA GOGIRL ACTIVEWEAR'S

SUPPLEMENTAL RESPONSES TO

PETITIONER'S FIRST SET OF

REQUESTS FOR ADMISSION (NOS. 1

- 46)

PROPOUNDING PARTY:

**Petitioner, NOR-CAL BEVERAGE CO., INC.,
("Petitioner")**

RESPONDING PARTY:

**Respondent, IRENE J. ORTEGA, dba GOGIRL
ACTIVEWEAR, ("Respondent")**

SET NO.:

ONE (1)

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Respondent IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR (“Respondent”) responds to the First Set of Requests for Admission (“RFA’s”) Nos. 1 – 46, propounded by Petitioner NOR-CAL BEVERAGE CO., INC. (“Petitioner”) as follows:

Respondent responds to Petitioner's First Set of RFAs subject to and without waiver of its objections, as set forth below. Discovery concerning matters in this litigation is ongoing and Respondent has not yet had the opportunity to gather and review all information that may be necessary to fully respond to Petitioner's RFAs, particularly, information which is within the exclusive control of Petitioner or third parties. Moreover, because facts now known may be imperfectly understood, or their relevance or consequence may be imperfectly understood, information related to such facts may in good faith not be included in the following responses.

Respondent reserves the right to refer to, conduct discovery regarding, or offer into evidence at trial any and all facts and documents notwithstanding the responses and objections herein.

General Objections

Respondent has not completed its discovery, investigation or preparation for trial. Accordingly, the responses given to the RFAs herein are without prejudice to Respondent's right to introduce subsequently discovered evidence or supplement its responses. These responses are made based on the current information and belief of Respondent. Respondent's responses are given solely for the purposes of and in relation to the instant litigation.

Respondent makes the following initial objections each of which applies to each RFA. Respondent objects to providing any information protected by attorney/client privilege, work-product doctrine, constitutional right to privacy, or any other applicable privilege, and Respondent hereby asserts such privileges. Unintentional production of such information shall not be a waiver of any privilege.

To the extent that each RFA seeks disclosure of sensitive and confidential technical, business, and/or financial information and/or trade secrets, Respondent's responses are protected from disclosure to certain parties pursuant to the terms of the protective order sought or entered in this case.

Respondent objects to each RFA to the extent the request purports to call for information beyond Respondent's knowledge, possession, custody or control. Respondent's initial response to each RFA is based upon Respondent's current knowledge and represents Respondent's reasonable efforts to provide information that is in Respondent's knowledge, possession, custody, or control.

Respondent objects to each RFA to the extent the RFA requests admissions of fact regarding the unrelated third party, Girl World Sports, Inc., of which Respondent has no first-hand knowledge as to its corporate standing or legal capacity.

Respondent objects to each RFA to the extent the RFA requests information that is unnecessary, burdensome and unreasonable under the circumstances.

Respondent objects to each RFA to the extent the RFA seeks information already in Petitioner's possession, custody or control, or available to Petitioner from public sources.

Respondent objects to each RFA to the extent the RFA is a premature contention RFA.

Respondent objects to Petitioner's definition of Respondent to the extent it includes individuals or entities not under the control of Respondent.

Respondent objects to any request for identification of documents withheld on the basis of a claim of privilege to the extent it requires more than Respondent is required to provide under the Federal Rules of Civil Procedure.

In responding, Respondent does not concede that the information requested is relevant to the subject matter of this litigation, nor reasonably calculated to lead to the discovery of admissible evidence. Respondent expressly reserves the right to object to further discovery and to the subject matter and number of these RFAs and the right to object to the introduction into evidence of information developed in response to these responses.

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit that Girl World Sports, Inc. was a Texas corporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Respondent believed that Girl World Sports, Inc. was a Texas corporation, but lacks sufficient information to admit the true capacity of Girl World Sports, Inc. and therefore denies this request.

REQUEST FOR ADMISSION NO. 2

Admit that Girl World Sports, Inc. was granted its corporate charter on or about March 8, 1996.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Respondent lacks sufficient information to confirm the information sought in this request and therefore denies this request.

REQUEST FOR ADMISSION NO. 3

Admit that on or about March 23, 2001, the corporate charter of Girl World Sports, Inc. was forfeited.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 4

Admit that from March 23, 2001 until the present, Girl World Sports, Inc. has failed or refused to revive its right to do business in the State of Texas, or elsewhere.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 5

Admit that from March 23, 2001 until the present, Girl World Sports, Inc. was not in "good standing" as a corporation in the State of Texas, as it had not satisfied all State tax requirements.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 6

Admit that from March 23, 2001 until the present, Girl World Sports, Inc. lacked the legal capacity to enter into any contracts with other parties or persons.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 7

Admit that any contract executed by or on behalf of a corporation which lacks the legal capacity to act as a corporation, is void.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 8

Admit that any contract executed by or on behalf of a corporation which lacks the legal capacity to act as a corporation, may not be enforced under any circumstances.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 9

Admit that on or about June 22, 2001, an Assignment of Registration No. 2,227,005 was executed.

RESPONSE TO REQUEST FOR ADMISSION NO. 9

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 10

Admit that the Assignor of Registration No. 2,227,005, in connection with the Assignment executed on or about June 22, 2001, was Girl World Sports, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 10

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 11

Admit that on or about June 22, 2001, Sasha Milby was Vice-President of Girl World Sports, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 11

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Respondent believes that Sasha Milby was Vice President of Girl World Sports, Inc., but Respondent does not have sufficient knowledge of third party information to respond to this request for admission and denies the request on that basis.

REQUEST FOR ADMISSION NO. 12

Admit that on or about June 22, 2001, Sasha Milby, signed the Assignment of Registration No. 2,227,005 on behalf of Girl World Sports, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 12

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Respondent believes that Sasha Milby signed the Assignment of Registration No. 2,227,005 on behalf of Girl World Sports, Inc., but Respondent does not have sufficient knowledge of third party information to respond to this request for admission and denies the request on that basis.

REQUEST FOR ADMISSION NO. 13

Admit that the Assignee of Registration No. 2,227,005, in connection with the Assignment executed on or about June 22, 2001, was ORTEGA.

RESPONSE TO REQUEST FOR ADMISSION NO. 13

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 14

Admit that ORTEGA paid consideration to Girl World Sports, Inc., for executing the Assignment of Registration No. 2,227,005.

RESPONSE TO REQUEST FOR ADMISSION NO. 14

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 15

Admit that Sasha Milby received money from ORTEGA, for executing the Assignment of Registration No. 2,227,005.

RESPONSE TO REQUEST FOR ADMISSION NO. 15

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 16

Admit that at the time the Assignment of Registration No. 2,227,005 was executed, the corporate charter of Girl World Sports, Inc. had been forfeited by the State of Texas.

RESPONSE TO REQUEST FOR ADMISSION NO. 16

Respondent incorporates by reference its General Objections as though set forth in full. Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 17

Admit that at the time the Assignment of Registration No. 2,227,005 was executed, Girl World Sports, Inc. lacked the legal capacity to act as a corporation.

RESPONSE TO REQUEST FOR ADMISSION NO. 17

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 18

Admit that at the time the Assignment of Registration No. 2,227,005 was executed, Girl World Sports, Inc. was "not in good standing".

RESPONSE TO REQUEST FOR ADMISSION NO. 18

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 19

Admit that at the present time, the corporate charter of Girl World Sports, Inc. remains forfeited.

RESPONSE TO REQUEST FOR ADMISSION NO. 19

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 20

Admit that at the present time, Girl World Sports, Inc. is "not in good standing."

RESPONSE TO REQUEST FOR ADMISSION NO. 20

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 21

Admit that on or about June 22, 2001, ORTEGA knew that the corporate charter of Girl World Sports, Inc. in the State of Texas had been forfeited.

RESPONSE TO REQUEST FOR ADMISSION NO. 21

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 22

Admit that on or about June 22, 2001, ORTEGA knew that Girl World Sports, Inc. was "in bad standing", in the State of Texas.

RESPONSE TO REQUEST FOR ADMISSION NO. 22

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 23

Admit that on or about June 22, 2001, ORTEGA knew that Girl World Sports, Inc. was no longer in business.

RESPONSE TO REQUEST FOR ADMISSION NO. 23

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 24

Admit that on or about June 22, 2001, ORTEGA knew that Girl World Sports, Inc. was bankrupt.

RESPONSE TO REQUEST FOR ADMISSION NO. 24

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 25

Admit that the Assignment of Registration No. 2,227,005, executed on or about June 22, 2001 by Girl World Sports, Inc., was and is void.

RESPONSE TO REQUEST FOR ADMISSION NO. 25

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 26

Admit that the Assignment of Registration No. 2,227,005, executed on or about June 22, 2001 by Girl World Sports, Inc., was and is legally ineffective to transfer any trademark rights to ORTEGA.

RESPONSE TO REQUEST FOR ADMISSION NO. 26

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 27

Admit that the Assignment of Registration No. 2,227,005, executed on or about June 22, 2001 by Girl World Sports, Inc., was and is legally ineffective to transfer title of Registration No. 2,227,005, to ORTEGA.

RESPONSE TO REQUEST FOR ADMISSION NO. 27

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 28

Admit that the owner of a Federal Registration has an affirmative obligation to file an Affidavit Of Use in the USPTO, prior to the end of six (6) years following the date of Registration.

RESPONSE TO REQUEST FOR ADMISSION NO. 28

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 29

Admit that upon failure timely to comply with the obligation to file an Affidavit of Use respecting a Registration issued six (6) years previously, the Registration shall be cancelled by the Director.

RESPONSE TO REQUEST FOR ADMISSION NO. 29

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 30

Admit that Girl World Sports, Inc. filed no Section 8 Affidavit Of Use, respecting Registration No. 2,227,005.

RESPONSE TO REQUEST FOR ADMISSION NO. 30

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 31

Admit that ORTEGA was not the owner of Registration No. 2,227,005, at the time the obligation to file a Section 8 Affidavit Of Use arose.

RESPONSE TO REQUEST FOR ADMISSION NO. 31

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 32

Admit that only the owner of a Registration, or its duly authorized representative, has the legal capacity to file a Section 8 Affidavit Of Use.

RESPONSE TO REQUEST FOR ADMISSION NO. 32

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 33

Admit that ORTEGA has never had the legal capacity to act on behalf of Girl World Sports, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 33

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, vague, overbroad, unintelligible, and calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 34

Admit that ORTEGA' s attorney has never had the legal capacity to act on behalf of Girl World Sports, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 34

Respondent incorporates by reference its General Objections as though set forth in full.

Objection, vague, overbroad, unintelligible, and calls for a legal conclusion. Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 35

Admit that Exhibit A, attached hereto and entitled "CERTIFICATE OF ACCOUNT STATUS", is genuine.

RESPONSE TO REQUEST FOR ADMISSION NO. 35

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 36

Admit that Exhibit B, attached hereto and entitled "FRANCHISE TAX CERTIFICATION OF ACCOUNT STATUS", is genuine.

RESPONSE TO REQUEST FOR ADMISSION NO. 36

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 37

Admit that Exhibit C, attached hereto and entitled "Determination Of Forfeiture Pursuant To Section 171.309, Texas Tax Code Annotated", is genuine.

RESPONSE TO REQUEST FOR ADMISSION NO. 37

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 38

Admit that Exhibit D, attached hereto as a certification of true and correct copy of each document on file in the Office Of The Secretary of State of Texas regarding Girl World Sports, Inc., is genuine.

RESPONSE TO REQUEST FOR ADMISSION NO. 38

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 39

Admit that Exhibit E, attached hereto and entitled Form PTO-1594, is genuine.

RESPONSE TO REQUEST FOR ADMISSION NO. 39

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 40

Admit that Exhibit F, attached hereto and entitled "ASSIGNMENT", is genuine.

RESPONSE TO REQUEST FOR ADMISSION NO. 40

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Admit.

REQUEST FOR ADMISSION NO. 41

Admit that Exhibit A, attached hereto and entitled "CERTIFICATE OF ACCOUNT STATUS", is true and accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 41

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 42

Admit that Exhibit B, attached hereto and entitled "FRANCHISE TAX CERTIFICATION OF ACCOUNT STATUS", is true and accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 42

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 43

Admit that Exhibit C, attached hereto and entitled "Determination Of Forfeiture Pursuant To Section 171.309, Texas Tax Code Annotated", is true and accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 43

Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 44

Admit that Exhibit D, attached hereto as a certification of true and correct copy of each document on file in the Office Of The Secretary of State of Texas regarding Girl World Sports, Inc., is true and accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 44

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Deny. Respondent is unable to authenticate the genuineness of reproductions of third party documentation.

REQUEST FOR ADMISSION NO. 45

Admit that Exhibit E, attached hereto and entitled Form PTO-1594, is true and accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 45

Respondent incorporates by reference its General Objections as though set forth in full. Without waiving said objections, Respondent responds as follows:

Admit.

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REQUEST FOR ADMISSION NO. 46

Admit that Exhibit F, attached hereto and entitled "ASSIGNMENT", is true and accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 46

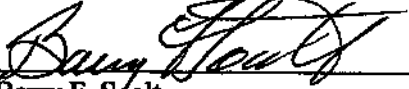
Respondent incorporates by reference its General Objections as though set forth in full.

Without waiving said objections, Respondent responds as follows:

Admit.

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

Dated: August 29, 2008

By: 
Barry F. Sealt
530 B Street, Suite 2100
San Diego, CA 92101
Telephone: (619) 525-3865
Facsimile: (619) 235-0398

Attorneys for Respondent and Counterclaim
Plaintiff IRENE J. ORTEGA-ELDON
dba GOGIRL ACTIVEWEAR

VERIFICATION

I have read the foregoing RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR'S SUPPLEMENTAL RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1 – 46) and know its contents.

I am the owner of GOGIRL ACTIVEWEAR, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for this reason. I have read the foregoing document and know its contents. I am informed and believe that the matters stated therein are true and correct and on that ground declare under penalty of perjury, under the laws of the State of California, that the same are true and correct.

Executed on _____, 2008, at San Diego, California.

Signature: _____
Name: Irene Ortega-Eldon

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On August 18, 2008, I served the within documents:

**RESPONDENT IRENE J. ORTEGA, DBA GOGIRL
ACTIVEWEAR'S SUPPLEMENTAL RESPONSES TO
PETITIONER'S FIRST SET OF REQUESTS FOR
ADMISSION (NOS. 1 - 46)**

- X by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.
- X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.


by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.

by having Knox Services personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

SEE ATTACHED SERVICE LIST

- X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 29, 2008, at San Diego, California.



Brandy Brickey

SERVICE LIST

R. Michael West, Esq.
Law Offices Of R. Michael West
1922 21st Street
Sacramento, California 95811
Tel: (916)-444-5444
Fax: (916)-444-5441

Attorney For Petitioner
NOR-CAL BEVERAGE CO., INC.

EXHIBIT 2

Casey, Alejandra G.

From: Casey, Alejandra G. on behalf of Soalt, Barry F.
Sent: Friday, January 16, 2009 6:16 PM
To: 'MWEST@SACIPLAW.COM'
Subject: Nor-Cal Beverage Co., Inc. v Irene J. Ortega, dba Go Girl Activewear
Attachments: Letter.pdf - Adobe Acrobat Standard.pdf

Dear Michael:

Please see the attached documents. The originals have been sent to you via Federal Express.

Thank you.

Best regards,

Barry F. Soalt
Partner
Intellectual Property Law
Patents, Trademarks and Copyrights

Procopio Cory Hargreaves & Savitch LLP
530 B Street | Suite 2100 | San Diego, CA 92101
Direct: 619.525.3865 | *Fax:* 619.235.0398
Email: bfs@procopio.com
www.procopio.com

2/5/2009



Procopio, Cory, Hargreaves and Savitch LLP

Barry F. Soalt
Direct Dial: (619) 525-3865
E-mail: bfs@procopio.com

January 16, 2009

Via Email and Federal Express

R. Michael West, Esq.
Law Offices of R. Michael West
1922 21st Street
Sacramento, CA 95811

Re: **GO GIRL ACTIVEWEAR / GO GIRL ENERGY DRINK**
Our Reference No.: 111642-1

Dear Michael:

Per your request, enclosed herewith please find Ortega's Supplemental Responses to Interrogatories, Set One and production of documents, bates range IJO000001-IJO005958. Please note that many of these documents have been marked "Confidential" pursuant to the Protective Order in this matter.

We conducted a detailed document review and have supplemented our responses by identifying document ranges responsive to each inquiry where possible. We hope our efforts will alleviate any issues once you have had a chance to review said documentation.

Regarding your inquiry on our position with respect to a further extension of the discovery cut-off and trial dates, we are willing to agree to a stipulation of all such dates and you have our consent to file a Motion on Consent or otherwise prepare a joint stipulation to extend all dates by 60 days. If you believe a further extension is warranted, please give me a call to discuss.

Very truly yours,



Barry F. Soalt

BFS/jdk

cc: Go Girl Activewear

Encl: Supplemental Response to Interrogatories

Disk of electronic copy of documents IJO000001-IJO0059578

Copy of Stipulated Protective Order

530 B Street, Suite 2100 • San Diego, CA 92101-4469 • T. 619.238.1900 F. 619.235.0398

North County Office: 1917 Palomar Oaks Way, Suite 300 • Carlsbad, CA 92008-6511 • T. 760.931.9700 F. 760.931.1155

www.procopio.com                           

111642/000001/1008164.01

IN THE UNITED STATES TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NOR-CAL BEVERAGE CO., INC.,	)	Cancellation No. 92048879
)	
Petitioner and Counterclaim Defendant,)	
v.	)	RESPONDENT IRENE J. ORTEGA,
	)	DBA GOGIRL ACTIVEWEAR'S
IRENE J. ORTEGA, dba GOGIRL	)	SUPPLEMENTAL RESPONSE TO
ACTIVEWEAR,	)	PETITIONER'S FIRST SET OF
	)	INTERROGATORIES (NOS. 1, 2, 3, 4,
Respondent and Counterclaim Plaintiff.	)	9, 10, AND 11)
)	

PROPOUNDING PARTY:	Petitioner, NOR-CAL BEVERAGE CO., INC., ("Petitioner")
RESPONDING PARTY:	Respondent, IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR, ("Respondent")
SET NO.:	ONE (1)

PRELIMINARY STATEMENT

Respondent and Counterclaim Plaintiff IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR (hereinafter "Respondent") has not completed the investigation or the analysis of the facts related to this case, has not completed discovery, and has not completed preparation for trial. The information set forth herein is true and correct to Respondent's best knowledge at this time and is subject to correction for inadvertent errors or omissions, if any errors or omissions shall be found to exist. Furthermore, these Responses are based upon the records and information presently available to Petitioner. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts and documentation, and

will add meaning to the known facts as well as establish entirely new factual contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the facts, contentions and documents identified herein. The Responses set forth herein are given without prejudice to Respondent's right to produce evidence of any subsequently discovered facts or documents or interpretations thereof, and/or to add to, modify or otherwise amend the Responses set forth herein.

Respondent accordingly reserves the right to change any and all responses as additional facts are ascertained, analyses are made, legal research is completed, contentions are framed and documents or facts are discovered. The Responses contained herein are made in a good faith effort to supply as much factual information in as much specificity as possible, but should in no way prejudice Respondent, in relation to further discovery, investigation, research, and/or analysis.

This Preliminary Statement shall apply to each and every Response given herein and is incorporated by reference as though set forth in each of the Responses appearing on the following pages.

GENERAL OBJECTIONS

The following general objections apply to each of Petitioner's Interrogatories and are incorporated by reference to each of Respondent's specific responses thereto:

1. Respondent has not completed discovery nor has it completed preparation for trial. All of the responses contained herein are based upon such information and documents as are presently available and are specifically known to Respondent and discloses only those facts and contentions and identifies only those documents that presently occurred to or are presently in

the possession of this responding party. Therefore, the following responses are given without prejudice to its right to produce evidence of any subsequently discovered documents.

2. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts and documentation, and will add meaning to the known facts as well as establish entirely new factual contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the facts, contentions and documents identified herein. The following responses are given without prejudice to the rights of Respondent to produce evidence of subsequent documents and/or tangible things that may later be discovered and/or located.

3. Respondent accordingly reserves the right to change any and all responses as additional facts are ascertained, analyses are made, legal research is completed, contentions of frame, and documents or facts are discovered. The responses contained herein are made in a good faith effort to supply as much factual information in as much specificity as possible, but should in no way prejudice Respondent in relation to further discovery, investigation, research and/or analysis.

4. Respondent objects to every interrogatory which purports to impose obligations on Respondent beyond the requirements of the Federal Rules of Civil Procedure, which govern Respondent's responses.

5. Respondent objects to Petitioner's Interrogatories to the extent they seek material prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of mental impressions, conclusions, opinions and legal theories of any attorney for Respondent, trade secrets or matters within Respondent's right to privacy, or any other information protected from discovery under the Federal Rules of Civil Procedure, because Respondent asserts and

relies on these privileges and protections to the fullest extent possible. Any disclosure by Respondent or any information that is within these categories is inadvertent, is not intended to be a waiver, and when Respondent becomes aware of it Respondent will seek an Order of the TTAB permitting it to withdraw the inadvertent disclosure and prohibiting any use, disclosure or reference to the information.

6. Respondent objects to Petitioner's Interrogatories to the extent they seek information protected from discovery under the attorney-client privilege, or the work-product doctrine, or any other privilege recognized under the law.

7. No incidental or implied admissions are intended by any objection or response herein. The fact that Respondent has objected or responded to any interrogatory in support thereof shall not be deemed an admission that Respondent accepts or admits the existence of any facts set forth or assumed by each interrogatory or that such objection or response constitutes admissible evidence. The fact that Respondent has answered part or all of any demand is not intended to and shall not be construed as a waiver by Respondent of any part of any objection to any interrogatory.

8. Each response and objection herein is made without waiver of any objections as to competence, relevance, materiality, proprietary and admissibility and to any and all other objections on any grounds which would requires the exclusion from evidence at trial of any statement herein, or any demands asked of, or any statements contained herein or marked by the witness while present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at trial

9. Respondent objects to any demand or part thereof which purports to require it to provide information that is equally available to Petitioner. Furthermore, Respondent objects to

any demand which purports to require it to provide information that is in the exclusive control of Petitioner or third parties.

These statements and objections shall apply for each and every response given herein, and is incorporated by reference as those set forth in each of the responses appearing on the following pages.

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

Do YOU use the term GO GIRL or any variants thereof as a trademark'? If so, with respect to such use:

- a. State the date such use commenced;
- b. State whether such use has been continuous from the date of such first use to the present;
- c. State the geographic areas where GO GIRL has been used by YOU as a trademark;
- d. Identify the specific names, as used in the trade, of all goods in connection with which YOU have used GO GIRL as a trademark;
- e. Identify representative labels, tags, containers of goods, or other printed material which would evidence such trademark usage; and,
- f. Identify representative documents which support, evidence, reflect, or explain YOUR answers to subsections a-e, supra.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague and not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

a. GO GIRL – used since June 21, 1996 by Applicant’s predecessor-in-interest acquired by assignment on June 22, 2001; first use by Applicant since October 1, 1998.

GO GIRL ACTIVEWEAR – used since October 1, 1998.

GO GIRL SPORTSWEAR – used since October 1, 1998.

b. Applicant’s use of GO GIRL and GO GIRL ACTIVEWEAR has been continuous since first use.

c. United States, Canada, Asia, Europe, Australia.

d. Women’s and girls clothing, including without limitation: Jerseys, bike shorts, shorts, t-shirts, tank tops, sweat shirts, sweat pants, socks, hats, caps, leggings, knee warmers, arm warmers, vests. Water bottles, hydration packs, chain guards, lip chap, decals.

e. Hangtags, sewn in labels, transfers, decals, embroidery on the goods, packaging for the goods, printed material and advertisements.

f. See documents responsive to Request for Production:

a. IJO003655-IJO003693, IJO004951-IJO004954, IJO004978-IJO004991, IJO004999-IJO005002, IJO005004-IJO005005, IJO005009-IJO005083, IJO005092, IJO005138-IJO005162, IJO005329-IJO005370, IJO005625-IJO005653, IJO005837-IJO005880, IJO005884, IJO005930-IJO005948, IJO005958;

b. IJO000001-IJO005958;

- c. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128, IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225, IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512, IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632, IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003, IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948, IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977, IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-IJO005929, IJO005949-IJO005957;
- d. IJO000001-IJO005958;
- e. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128, IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225, IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512, IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632, IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003, IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948, IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977, IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-IJO005929, IJO005949-IJO005957.

Respondent reserves the right to amend this Response. Discovery is continuing.

INTERROGATORY NO. 2

If you contend that there is a likelihood of confusion which exists as a consequence of NOR-CAL'S use of the mark "GO GIRL" and YOUR use of the mark GO GIRL, set forth in detail the basis for such a contention, identifying all supportive facts and documents, and identifying the persons most knowledgeable regarding such contentions, facts and documents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

Nor-Cal's GO GIRL energy drinks and clothing products are marketed to women geared toward health, nutrition and an active lifestyle; the products are advertised as being targeted to athletic women; the marketing and channels of trade include Internet sales and sales of product at sporting events and competitions, such as the L.A. Marathon, Sea Otter Classic, the Norba Nationals, triathlon events aimed at running and biking which are the same marketing channels of trade as Ortega's goods. Nor-Cal endeavors to sell its goods in non-traditional outlets for soft drinks and women-only fitness centers which overlap with the sporting channels of trade used by Ortega. Nor-Cal's sales of clothing and drinks to this market segment will create a likelihood of confusion with Ortega's sales of GO GIRL clothing. Nor-Cal sells clothing goods on line in its electronic store, and elsewhere, which goods are the same colors and produced by some of the same manufacturers as Ortega's goods and look like Ortega's goods to the average consumer.

Witnesses include Irene Ortega and others familiar with Ortega's brand and business; see also documents produced in response to Request for Production:

IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128, IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225, IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512, IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632, IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003, IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948, IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977, IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-IJO005929, IJO005949-IJO005957.

Respondent reserves the right to amend this Response. Discovery is continuing.

INTERROGATORY NO. 3

With respect to YOUR business activities in the United States:

- a. List the specific states where YOU have sold and/or distributed goods under the GO GIRL mark;
- b. Set forth the dates of YOUR first sales or distribution of goods under the GO GIRL mark, for each such state.
- c. Describe the kinds, types, or classes of persons to whom YOU sell goods under the GO GIRL mark;
- d. Describe the trade or distribution channels through which YOU sell or distribute any goods, under the GO GIRL mark;

- e. State both a range and an average price, for all goods sold by YOU under the GO GIRL mark;
- f. Identify representative documents which would support, evidence, reflect, or explain those answers given to subsections a-e, supra.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Nationally throughout the United States.
- b. See response to Interrogatory No. 1. The information is not compiled state by state.
- c. Health and nutritionally conscious women who have active lifestyles, including bikers, surfers, wake boarders, runners, and tri-athletes; and women who wear casual active wear.
- d. On-line Internet retail store sales, wholesale sales, retail sales and distributor/licensee sales to retail trade, direct sales at athletic events.
- e. \$0.50 - \$75.00 retail.
- f. See documents responsive to Request for Production:
 - a. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128, IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225, IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512, IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632,

- IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003,
IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948,
IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977,
IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-
IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-
IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-
IJO005929, IJO005949-IJO005957;
- b. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128,
IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225,
IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512,
IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632,
IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003,
IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948,
IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977,
IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-
IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-
IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-
IJO005929, IJO005949-IJO005957;
- c. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128,
IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225,
IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512,
IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632,
IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003,

- IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948,
IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977,
IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-
IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-
IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-
IJO005929, IJO005949-IJO005957;
- d. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128,
IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225,
IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512,
IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632,
IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003,
IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948,
IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977,
IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-
IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-
IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-
IJO005929, IJO005949-IJO005957;
- e. IJO000001-IJO000094, IJO000095-IJO000113, IJO000114-IJO000128,
IJO000129-IJO000224, IJO000225-IJO001162, IJO001163-IJO001225,
IJO001226-IJO001334, IJO001335-IJO001337, IJO001338-IJO001512,
IJO001618-IJO001912, IJO001513-IJO002824, IJO002825-IJO003632,
IJO003634-IJO003693, IJO003694-IJO003879, IJO003880-IJO004003,
IJO004004-IJO004014, IJO004015-IJO004268, IJO004035-IJO004948,

IJO004949-IJO004950, IJO004955-IJO004972, IJO004967-IJO004977,
IJO004984-IJO004988, IJO004993-IJO004998, IJO005003, IJO005006-
IJO005008, IJO005093-IJO005137, IJO005318-IJO005328, IJO005371-
IJO005624, IJO005654-IJO005793, IJO005881-IJO005883, IJO005885-
IJO005929, IJO005949-IJO005957.

Respondent reserves the right to amend this Response. Discovery is continuing.

INTERROGATORY NO. 4

State whether any trademark, service mark, or tradename search was ever conducted by or on behalf of YOU concerning uses and/or registrations relating to the term GO GIRL. If the answer to this is other than a categorical, unqualified negative:

- a. Identify the person responsible for initiating each search;
- b. Identify the person who conducted each search;
- c. Identify all documents and oral communications relating to each search.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Irene Ortega.
- b. Irene Ortega and/or my attorney, Barry Soalt.
- c. See documents responsive to Request for Production:

IJO003655-IJO003693, IJO004951-IJO004954, IJO004978-IJO004991,
IJO004999-IJO005002, IJO005004-IJO005005, IJO005009-IJO005083,
IJO005092, IJO005138-IJO005162, IJO005329-IJO005370, IJO005625-
IJO005653, IJO005837-IJO005880, IJO005884, IJO005930-IJO005948,
IJO005958.

Respondent reserves the right to amend this Response. Discovery is continuing.

INTERROGATORY NO. 9

Identify any instances or occurrences of actual confusion of which you are aware, arising from NOR-CAL' S use of the GO GIRL mark and YOUR use of the GO GIRL mark, by setting forth in detail such instance(s), identifying all supportive facts and documents, and identifying the persons most knowledgeable regarding such instances, facts and documents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

At sporting events, my customers and prospective customers are confused by Nor-Cal energy drink and clothing items, believing them to be my beverage and my clothing, and buying Nor-Cal products under the assumption that they are my products.

New customers of Ortega, having observed the Nor-Cal energy drink and/or clothing line, have been confused about similar items on the Nor-Cal website, or otherwise confused by the Nor-Cal GO GIRL clothing line in which GO GIRL dominates.

Person most knowledgeable is as follows:

Steven Johnson of Cowboy Fuzzzyduds, a supplier of goods sold by Ortega, saw the Nor-Cal GO GIRL products at a sporting event and called Ortega.

See documents responsive to Request for Production:

IJO003655-IJO003693, IJO004951-IJO004954, IJO004978-IJO004991, IJO004999-IJO005002, IJO005004-IJO005005, IJO005009-IJO005083, IJO005092, IJO005138-IJO005162, IJO005329-IJO005370, IJO005625-IJO005653, IJO005837-IJO005880, IJO005884, IJO005930-IJO005948, IJO005958; IJO000095-IJO000113, IJO000129-IJO000224, IJO000255-IJO000663, IJO001163-IJO001225, IJO001335-IJO001337, IJO001513-IJO002824, IJO002855-IJO002973, IJO003634-IJO003693, IJO003880-IJO004003, IJO004015-IJO004268, IJO004949-IJO004950, IJO004955-IJO004972, IJO004984-IJO004988, IJO005006-IJO005008, IJO005882-IJO005883, IJO005885-IJO005929, IJO005949-IJO005957.

Respondent reserves the right to amend this Response. Discovery is continuing.

INTERROGATORY NO. 10

With respect to the Assignment executed in part by YOU on or about June 22, 2001, for Registration No. 2,227,005:

- a. Do you contend that said Assignment is valid and legally enforceable?
- b. Do you contend that on June 22, 2001, the corporate charter of Girl World Sports, Inc. was valid and subsisting in the State of Texas?

- c. Do you contend that on June 22, 2001, Girl World Sports, Inc. was in “good standing” as a corporation in the State of Texas?
- d. Do you contend that on June 22, 2001, Girl World Sports, Inc. had the legal capacity to enter into a contract of any type, including said Assignment?
- e. If any of your answers to subsections a-d was in the affirmative, for each such answer, set forth in detail the basis for such a contention, identifying all supportive facts and documents, and identifying the persons most knowledgeable regarding such contentions, facts and documents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Yes.
- b,c. Yes, the Assignment contained representations and warranties signed by Assignor to the effect that Assignor “covenants that it has all rights, title and interest in the registration of the mark, and warrants and represents that it has the power and authority to enter into this Assignment Agreement.” The Purchase Agreement had similar and further representations and warranties. Ortega has no factual information to believe otherwise.

- c. Yes.
- e. See response above and documents responsive to Request for Production:

IJO003655-IJO003693, IJO004951-IJO004954, IJO004978-IJO004991, IJO004999-IJO005002, IJO005004-IJO005005, IJO005009-IJO005083, IJO005092, IJO005138-IJO005162, IJO005329-IJO005370, IJO005625-IJO005653, IJO005837-IJO005880, IJO005884, IJO005930-IJO005948, IJO005958.

Respondent reserves the right to amend this Response. Discovery is continuing.

INTERROGATORY NO. 11

With respect to the Section 8 Affidavit of Use, filed by YOU on or about November 30, 2004 for Registration No. 2,227,005:

- a. Are all statements in said Affidavit of Use true?
- b. Identify all documents which support or substantiate the claims of use of the GO GIRL mark, in connection with each of the goods recited in Registration No. 2,227,005;
- c. Were YOU acting as an agent or representative of Girl World Sports, Inc., at the time said Affidavit of Use was filed?

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11

Respondent incorporates by reference its General Objections as though set forth in full.

This Interrogatory is objected to on the basis that it is overbroad, compound, unduly burdensome, vague, calls for a legal conclusion, seeks proprietary information, seeks information subject to attorney-client and/or attorney work product privilege and is not reasonably calculated to lead to the discovery of admissible evidence. Without waving said objections, Respondent responds as follows:

- a. Yes.
- b. See responses to Interrogatories herein and documents responsive to Requests for Production: IJO000001-IJO005958.

c. No.

Respondent reserves the right to amend this Response. Discovery is continuing.

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

Dated: January 16, 2009

By: 

Barry F. Soalt
530 B Street, Suite 2100
San Diego, CA 92101
Telephone: (619) 525-3865
Facsimile: (619) 235-0398

Attorneys for Respondent and Counterclaim
Plaintiff IRENE J. ORTEGA-ELDON
dba GOGIRL ACTIVEWEAR

VERIFICATION

I have read the foregoing RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR'S SUPPLEMENTAL RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES (NOS. 1, 2, 3, 4, 9, 10, and 11) and know its contents.

I am the owner of GOGIRL ACTIVEWEAR, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for this reason. I have read the foregoing document and know its contents. I am informed and believe that the matters stated therein are true and correct and on that ground declare under penalty of perjury, under the laws of the State of California, that the same are true and correct.

Executed on 1/16 2009, at San Diego, California.

Signature: Irene Ortega-Eldon

Name: Irene Ortega-Eldon

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On January 15, 2009, I served the within documents:

**RESPONDENT IRENE J. ORTEGA, DBA GOGIRL ACTIVEWEAR'S
SUPPLEMENTAL RESPONSE TO PETITIONER'S FIRST SET OF
INTERROGATORIES (NOS. 1, 2, 3, 4, 9, 10, AND 11)**

by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.

- X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.

by having Knox Services personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

SEE ATTACHED SERVICE LIST

- X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 16, 2009, at San Diego, California.



Alejandra Gutierrez Casey

SERVICE LIST

R. Michael West, Esq.
Law Offices Of R. Michael West
1922 21st Street
Sacramento, California 95811
Tel: (916)-444-5444
Fax: (916)-444-5441

Attorney For Petitioner
NOR-CAL BEVERAGE CO., INC.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MBA/vb

Mailed: December 31, 2008

Cancellation No. 92048879

Nor-Cal Beverage Co., Inc.

v.

Irene J. Ortega d/b/a Gogirl
Activewear

Michael B. Adlin, Interlocutory Attorney:

The stipulated protective agreement filed on December 23, 2008 is noted and its use in this proceeding is approved. The parties are referred, as appropriate, to TBMP §§ 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board) and 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all

Cancellation No. 92048879

proceedings relating thereto, should otherwise be available for public inspection.

Trial dates remain as previously set.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.FinalRuleChart.pdf>

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stdagmnt.htm>

IN THE UNITED STATES TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NOR-CAL BEVERAGE CO., INC.)	
)	
Petitioner And Counterclaim Defendant,	)	Cancellation No. 92048879
)	
v.	)	STIPULATED PROTECTIVE
	)	ORDER
IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR)	
)	
Respondent And Counterclaim Plaintiff)	

IT IS HEREBY STIPULATED AND AGREED by and between Petitioner and Respondent through their respective attorneys, subject to the approval of the Trademark Trial and Appeal Board, that if, in the course of this Cancellation proceeding, either party has occasion to disclose information deemed by such party to constitute trade secrets or confidential and proprietary business information, the following procedures shall be employed and the restrictions set forth below shall govern.

THE PARTIES FURTHER AGREE AND ACKNOWLEDGE that the Rules of Practice in Trademark Cases provide that all inter partes files are generally open to public inspection and access. The terms of this Order are not to be used to undermine public access to such files.

1. Any documents, answers to interrogatories, answers to deposition questions, responses to requests for admission, samples, objects or any other materials or portions thereof (hereinafter "Material") provided by either party to the other during the pendency of this proceeding may be

designated and marked, in whole or in part, "Confidential" by counsel for the party producing such Material at the time of production thereof. To the extent that such Material is so marked "Confidential", such Material together with any copies of such Material, abstracts, summaries or information derived therefrom and any notes or other record regarding the contents thereof, it is hereinafter referred to as "Confidential Material". It is expressly understood and acknowledged that no Material shall be marked as "Confidential", unless the designating party and its/her attorney believe in good faith that the Material constitutes or includes Trade Secrets under California law, or that the Material constitutes or includes confidential and proprietary business information, the disclosure of which to the other party and/or to the public causes or would likely cause it/her economic harm or damage.

2. Counsel for the recipient party may disclose Confidential Material only to "Qualified Persons" as defined in paragraph 3 who by this Stipulation agree, or pursuant to paragraph 4 shall be required to agree, to maintain such information in confidence and who have need for such information to assist in the preparation and trial of this case and only for the purpose of said preparation and trial; said Qualified Persons shall not disclose Confidential Material to any other person and shall not use such information for any purpose other than the preparation and trial of this case.

3. As herein used, the term "Qualified Persons" means:

(a) The following outside counsel for the parties to this case, including said outside counsel's associate attorneys and stenographic and clerical employees:

- (i) For Petitioner: R. Michael West
- (ii) For Respondent: Barry F. Soalt

(b) Subject to signing secrecy agreements pursuant to paragraph 4, other persons (exclusive of officers, principals, employees, agents, or consultants of Petitioner and Respondent and officers, employees, agents or consultants of any other person, firm or corporation engaged in the manufacture, distribution or sale of the types of goods to which this proceeding relates) requested by counsel to furnish expert technical or economic services or to give testimony with respect to the subject matter of Confidential Material for purposes of this case.

4. Counsel in possession of Confidential Material received from the other party shall notify counsel for that party of the name of any person to whom disclosure of such Confidential Material is made pursuant to subsection (b) of paragraph 3 of this Stipulation. Each person designated in paragraph 3(b) shall, in turn, hold such Confidential Material in confidence, shall not use it for any purpose other than the purposes of this case, and, prior to disclosure to such person of such Confidential Material, shall be required to sign a declaration and acknowledgment of confidentiality in the form as follows:

"The undersigned has read the STIPULATED PROTECTIVE ORDER entered into between NOR-CAL BEVERAGE CO., INC. and IRENE J. ORTEGA, dba GOGIRL ACTIVEWEAR, dated _____, 2008, and agrees: (1) that he/she shall fully abide by the terms thereof; (2) that he/she shall not disclose the Confidential Material to or discuss the Confidential Material with any person who is not authorized pursuant to the terms of said Order to receive the disclosure thereof and who has not signed an affidavit of confidentiality as therein provided; and (3) that he/she shall not use such Confidential Material for any purpose other than for the purposes of this case."

A copy of each signed declaration and acknowledgment shall be furnished to the other party within ten (10) days after execution thereof.

5. In the event that the recipient party disagrees with the designation and marking by any producing party of any material as "Confidential", then the parties shall try first to resolve such dispute on an informal basis before presenting the dispute to the Trademark Trial and Appeal Board by motion, or otherwise.

6. The subject matter of any deposition given by any present or former officer, principal, employee, agent or consultant of a party and the original and all copies of the transcript of any such deposition shall be deemed to come within the term "Confidential Material" referred to in paragraph 1 of this Stipulation for a period ending ten (10) days after the transcript becomes available to counsel. On or before the tenth day after any such transcript becomes available to counsel, such transcript may be designated and marked, in whole or in part, "Confidential" by the party whose present or former officer, employee, agent or consultant gave such deposition, and the portions of the transcript of the deposition so marked shall be subject to the provisions of this Stipulation.

7. Where only a part of material furnished or produced by a party or a part of the transcript of any deposition given by any present or former officer, employee, agent or consultant of a party is Confidential Material, counsel for the party receiving such material or transcript shall delete therefrom Confidential Material before disclosing such material or transcript to any person other than Qualified Persons designated in paragraph 3.

8. Deletions made from any material or transcript in accordance with the terms of this Stipulation shall not affect the admissibility of any such material or transcript in evidence in this action.

9. If any Confidential Material is summarized, discussed or quoted from at any deposition, hearing, or at the trial of this action, all persons other than those otherwise permitted disclosure hereunder and outside counsel and Board personnel, shall be excluded from such portion of the deposition, hearing or trial. Any transcripts, exhibits or documents which are filed with the Board and which comprise, embody, summarize, discuss or quote from Confidential Material shall be sealed from public access unless and until the parties agree or the Board orders otherwise.

10. Notwithstanding any of the foregoing, material need not be treated by the recipient party as Confidential Material if it is previously known, or becomes known, to the recipient party from a source other than the producing party having a bona fide right to make such disclosure or if it becomes a matter of public record through no fault of the recipient party.

11. After this action is finally completed, including all appeals, counsel for all parties shall within three (3) months thereof return all Confidential Material to the producing party.

12. This Stipulation may be amended without leave of Board by the agreement of counsel for the parties in the form of a stipulation that shall be filed in this case.

13. In an effort to facilitate discovery and compliance with existing deadlines and scheduling existing in this case, this Stipulation shall become effective and binding upon the parties and their attorneys immediately upon complete signing thereof by the parties and their attorneys, although it will subsequently be forwarded to the Board for review and entry as an Order.

14. This Stipulation shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall this Stipulation preclude the filing of any motion with the Board for relief from a particular provision of this Stipulation or for additional protections not provided by this Stipulation.

NOR-CAL BEVERAGE CO., INC.

IRENE L. ORTEGA, aka GOGGIN, ACTIVEWEAR

FractiOnator

Respondent

By: Gordon G. Gurnea
Gordon Gurnea

Gene J. Ortega (an individual)

Title: Manager of Contract Sales

Date: 12-23-08

Date: 12/15/08

Attorney For Plaintiff:
Law Office Of R. Michael West

Attorneys For Respondent:
Protopia Cary Hargreaves & Saville LLP

By: R. Michael West
R. Michael West

By: Barry F. Scott
Barry F. Scott

Date: 12/23/08

Dated: 12/15/68

BY ORDER OF THE BOARD,

Dated _____